

§ 356.17

Affidavit of U.S. Citizenship or the supporting documentation, the applicant will be notified and will be given an opportunity to work with the Citizenship Approval Officer to resolve the matter before a determination is made whether the applicant qualifies as a U.S. Citizen.

§ 356.17 Annual requirements for vessel owners.

(a) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit a certification in the form of an Affidavit of United States Citizenship to the Citizenship Approval Officer on an annual basis as provided in paragraph (b) of this section. The vessel owner does not have to submit duplicate copies of documents that have already been submitted and that have not changed, provided a copy is still retained by us. This annual certification requirement does not excuse the owner from the requirements of § 356.5 to notify the Citizenship Approval Officer throughout the year when changes in the citizenship information occur.

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel's documentation and fishery endorsement. Owners of multiple vessels with different documentation renewal dates are only required to file an Affidavit of U.S. Citizenship and supporting documentation in conjunction with the first vessel renewal during each calendar year. To satisfy the citizenship approval requirements for the renewal of a fishery endorsement for another vessel in the same calendar year, the owner must submit a certification to the Citizenship Approval Officer at least 45 days prior to the renewal date for the vessel's fishery endorsement stating that the Affidavit of U.S. Citizenship and supporting documentation already on file with the Citizenship Approval Officer for the first renewal in that calendar year of a fishery endorsement for a vessel of 100 feet or greater in registered length belonging to that owner continues to be true and accurate. Any information or supporting documentation unique to a particular vessel that would normally be required to be sub-

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mitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under the rule must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

(c) Failure to file the annual certification in a timely manner may result in the expiration of the vessel's fishery endorsement, which will prohibit the vessel from operating in the fisheries of the United States.

Subpart D—Mortgages

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, it must be:

(1) A Citizen of the United States;

(2) A state or federally chartered financial institution that complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b); or

(3) A Mortgage Trustee that qualifies as a Citizen of the United States and that has satisfied the requirements of §§ 356.27 through 356.31.

(b) The Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements that correspond to the provisions of paragraph (a) of this section under which the Mortgagee qualifies.

(c) In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(d) A Preferred Mortgagee must provide an annual certification to the Citizenship Approval Officer in the form of an Affidavit of United States Citizenship evidencing its continued status as a Citizen of the United States or, if a state or federally chartered financial institution, that it complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b), during the period

that it holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the original filing.

§ 356.21 General approval of Non-Citizen Lender's standard loan or mortgage agreements.

(a) A Non-Citizen Lender that is a financial institution engaged in the business of financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a Non-Citizen Lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

(1) A copy of its standard loan or mortgage agreement for Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, including all covenants that may be included in the loan or mortgage agreement; and,

(2) A certification that it will not use covenants or restrictions in the loan or mortgage agreement outside of those approved by the Citizenship Approval Officer without obtaining the prior approval of the Citizenship Approval Officer.

(b) A Non-Citizen Lender that receives general approval may enter into loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without prior approval from us of each individual loan or mortgage; *provided*, that the loan or mortgage conforms to the standard agreement approved by the Citizenship Approval Officer and does not include any other covenants that have not been approved by the Citizenship Approval Officer.

(c) The Non-Citizen Lender must provide an annual certification to the Citizenship Approval Officer certifying that all loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels entered into under this general approval conform to the standard agreement approved by us and do not contain deviations from the standard agreement or covenants that

were not reviewed and approved by the Citizenship Approval Officer. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the previous approval.

(d) If the Non-Citizen Lender wishes to use covenants that were not approved pursuant to this section, it must submit the new covenants to the Citizenship Approval Officer for approval.

(e) A Non-Citizen Lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that have not been approved by the Citizenship Approval Officer will be subject to loss of its general approval and the Citizenship Approval Officer may determine that there has been an impermissible transfer of control to a Non-Citizen resulting in a loss of the vessel owner's eligibility to document the vessel with a fishery endorsement. If the Non-Citizen Lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.

§ 356.23 Restrictive loan covenants approved for use by Non-Citizen Lenders.

(a) We approve the following standard loan covenants, which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents between an owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and an unrelated Non-Citizen Lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the Non-Citizen Lender, so long as the lender's consent is not unreasonably withheld:

(1) Borrower cannot sell part or all of its assets;

(2) Borrower cannot merge, consolidate, reorganize, dissolve, or liquidate;

(3) Borrower cannot undertake new borrowing or contingent liabilities;